Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	
	)	

PETITION FOR

RECONSIDERATION AND CLARIFICATION

OF

THE VERMONT PUBLIC SERVICE BOARD

AND

THE VERMONT DEPARTMENT OF PUBLIC SERVICE

Elisabeth H. Ross
BIRCH, HORTON, BITTNER AND CHEROT
1155 Connecticut Ave., NW, Suite 1200
Washington, DC 20036-4308
(202) 659-5800

Their Attorneys

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INTRODUCTION

Pursuant to 47 CFR §1.106, the Vermont Department of Public Service and the Vermont Public Service Board ("Vermont") ask that the Federal Communications Commission ("the Commission") reconsider and clarify certain aspects of its Report and Order in CC Docket No. 96-45, released May 8, 1997[1] ("USF Order").

Vermont asks the Commission to reconsider its decision to fund only 25% of the universal service need from the federal Universal Service Fund ("Fund"). Under § 254(b) of the Telecommunications Act of 1996 ("Act"), Congress assigned to the Commission and the Joint Board full responsibility for meeting the Act's universal service principles, including the principle that rates charged in rural areas be reasonably comparable to rates charged in urban areas. Funding only 25% of the need fails to meet that federal duty. The Commission should also reconsider its decision not to define "reasonably comparable rates" under § 254(b)(3).

The Commission should clarify the following points raised in the USF Order:

[1] Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997).

* States may present to the Commission analyses based on cost studies to demonstrate that they need a higher federal USF payment. They should not need to take further steps to obtain relief such as deaveraging rates, or obtaining legislation for a new "mega" state universal fund.

* Universal service payments will be assigned to the intrastate jurisdiction, and the separations rule allocating additional loop expense to the interstate jurisdiction will remain in effect until modified, if at all, by a Joint Board.

* To the extent that the Commission continues this separations rule and convenes a Joint Board to examine separations changes related to the USF Order, it will refer the issue of eliminating the 200,000 line support distinction for the Board's review.

Vermont recognizes that the Commission and Joint Board had to resolve extremely difficult issues within a relatively short timeframe in this case. Vermont also appreciates that the Commission intends to work closely with the states on universal service issues. These issues bear immediate reconsideration and clarification, though, before the eighteen month implementation process.

I. The Commission Should Reconsider its Decision to Support Only 25% of the Rural, High Cost Need from the Federal Universal Service Fund.

A. The Act Requires the Commission, Not the States, to Ensure That the Fund Is Sufficient and That Rural and Urban Rates Are Reasonably Comparable.

Section 254(b) of the Telecommunications Act of 1996 delegated to the Commission and the Joint Board full responsibility for fulfilling the Act's universal service principles.[2] The Commission found that § 254(b) placed this responsibility exclusively on its shoulders in the USF Order:

> In thus prescribing that the support mechanism be 'sufficient,' Congress obligated the Commission to ensure that the support mechanisms satisfy Section 254's goal of 'preserving and advancing universal service,' consistent

[2] Section 254 (b) begins as follows: "The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles...."

> with the principles set forth in § 254(b), including the principle that quality services should be available at 'just, reasonable, and affordable rates.'[3] (Emphasis added)

The Commission highlighted that the Act gave it primary responsibility to satisfy § 254(b), and that the states played a secondary role.[4]

The Commission's findings under § 254(b) here do not comport with the Commission's decision to fund only one quarter of the high cost need from the federal Fund. By the time the Commission issued its July 10, 1997, Sua Sponte Reconsideration Order, the Commission admitted that it could only "anticipat[e]"[5] that the mechanisms would be sufficient, since it had to rely primarily on the states' much larger share to fund the need. The Commission cannot find that the Fund will be sufficient and that rates will be comparable, between rural and urban areas if it must rely on the states to supply the lion's share of the need. Congress could not have intended that the Commission use state universal service fund money to make up any needed difference because it made adoption of state funds voluntary.[6]

While the Commission may reassess the need for additional federal support as the states replace their programs with explicit support mechanisms,[7] it is impractical to think that the Commission can proceed by waiver and still meet its January 1, 1999 deadline. As

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[3] USF Order para. 815.

[4] Id. para. 816.

[5] Order on Reconsideration, CC Docket No. 96-45, FCC 97-246 para. 27 (rel. Jul. 10, 1997) ("Sua Sponte Reconsideration Order").

[6] Telecommunications Act, 47 U.S.C. § 254(f) (1996).

[7] Sue Sponte Reconsideration Order para. 28.

many as fifty cost studies must be performed and analyzed, and determinations made on many individual cases as to whether more federal funding is needed. The Commission's failure to prescribe a rate comparability standard[8] will also complicate the process, and this decision should be reconsidered. The Commission cannot guarantee that its procedure will yield reasonably comparable and affordable rates in every state by the time the new Fund is put in effect. The 25% decision is simply not the right starting point.

B. The Decision to Fund Only 25% of the Need Is Not Supported in the Record and Does Not Have a Reasonable Basis.

It appears that the Commission did not base its decision to pay only 25% of the need on a Joint Board Recommendation, or on any evidence on the record. The Commission noted that carriers had historically allocated 25% of their unseparated loop costs to the interstate jurisdiction for separations purposes.[9]

The 25% number is a jurisdictional separations factor for non traffic sensitive costs and bears no relationship to the principle of reasonably comparable rates. While carriers use this factor as a basic allocator to the interstate jurisdiction, carriers with high costs allocate more cost to the interstate jurisdiction on a sliding scale. Those carriers can allocate up to 100% of their high incremental loop costs to be funded by the interstate Fund.[10] Thus, the primary purpose of the Fund is to support costs allocated over the 25% factor.

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[8] See, e.g., Comments of the Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont and West Virginia Commissions, CC Docket No. 96-45 pp. 14-15 (filed May 1, 1997).

[9] USF Order para. 201.

[10] See 47 C.F.R. § 36.631; USF Order para. 209-211.

The Commission's USF Order does not acknowledge that the Fund has always, and must still, support some costs from the intrastate jurisdiction in order to keep rates affordable nationwide. Under the existing high cost support mechanism, the Commission authorized carriers to shift costs to the interstate jurisdiction to reduce their intrastate revenue requirement,[11] and the federal High Cost Fund paid for those additional intrastate costs. By funding only 25% of loop costs from the new Universal Service Fund, the Commission would reduce support for high cost carriers from existing levels. It would be overturning the old system, without any finding that the new system would meet the continuing goal of keeping rates affordable, as well as the new goals, such as keeping rates reasonably comparable.

C. If Vermont Must Fund 75% of its High Cost Need from Intrastate Revenues, Vermont's Rates Will Not Be Reasonably Comparable to Rates Charged in Other Areas of the Country.

The Commission's decision will have a negative rate impact on high cost rural states with relatively small intrastate revenues. Vermont's cost analyses demonstrate that it and other high cost rural states will have to impose a significant surcharge on intrastate revenues to meet the remaining 75% universal service need. For example, under the Benchmark Cost Model (version 1.1), Vermont will have to impose a 22% surcharge on its intrastate revenue

[11] Previously, high cost carriers allocated a greater proportion of loop costs to the interstate jurisdiction based on a Subscriber Plant Factor (SPF) to keep local rates affordable. In 1984, the FCC abolished SPF, and required all carriers to allocate 25% of their loop cost to interstate. At the same time, it set up this method of allocating additional loop costs to interstate to ensure that high cost carriers could continue to keep rates affordable. See Decision and Order, CC Docket No. 80-286, 96 F.C.C.2d 781 para. 22 (1984).

base of $193 million to provide the missing revenue; South Dakota will have to impose a 45% surcharge.[12]

The Commission's method will produce a particularly harsh result in Vermont. Relative to other states, in Vermont the proportion of interstate revenues to total revenues is high. Vermont has 51% interstate revenues, while Michigan has 31%, New York has 37% and California has 32%.[13] The Commission decision would take much more money from Vermont interstate revenue for the interstate fund (51%), than it would pay back in a federal benefit (25%). This is an even worse cost/benefit ratio than the average, nationwide: interstate revenues nationwide are 39% of total revenue.

The Commission's decision will likely produce rates in high cost rural states that are not reasonably comparable to rates charged in other states. If rates remain averaged statewide, urban and rural rates within Vermont will remain comparable. Vermont rates will be substantially higher than rates charged in other states, however, particularly in urban areas.

II. The Commission Should Clarify The Evidence That States Must Present To Demonstrate That They Need A Larger Payment From The Federal Fund To Satisfy Their USF Needs.

In the USF Order, the Commission suggests that it may give states in need a larger federal USF payment and that states may go through a process of identifying implicit

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[12] See Attachment A.

[13] James Eisner, Distribution of Intrastate and Interstate Telephone Revenue by States, FCC, Industry Analysis Division, January 1997, at Table 2. These statistics are incorporated in Attachment A in columns showing intrastate and interstate retail revenues.

universal service support in intrastate rates, and converting that subsidy to explicit support.[14] As states do this, the Commission says, it will be able to assess whether additional federal support is necessary to ensure that quality services remain available at affordable rates.[15]

It would be helpful for the Commission to clarify the burden of proof a state would bear in this process. It should clarify that if a state filed a cost study showing how high it would have to raise rates to provide the needed support, this evidence would stand as a sufficient justification. In particular, the Commission should clarify that a state need not take the additional steps of deaveraging rates, or of having its legislature enact a "mega" high cost fund, before it can prove that it needs additional federal funding. It is unlikely that a state could accomplish these additional steps before the new Fund takes effect in January 1, 1999, particularly since obtaining legislation is beyond a state commission's control. Even if such steps were possible, they would be harmful, causing unreasonably high and unaffordable rates in violation of Congress's universal service principles.

The Commission could not have intended such confusing and counterproductive consequences in its order. Redesigning and unbundling rates, and removing subsidies, are difficult and complex tasks for state regulators and will require considerable cooperation with the Commission. The states also want to approach this process as partners as the best means of accomplishing these goals.

III. The Commission Should Clarify That LECs Should Continue To Use USF Revenue To Reduce Local Rates, And That The Current Separations Rules For Incremental Loop Recovery Will Continue Until Addressed By A Joint Board.

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[14] USF Order para. 202.

[15] Id.

As the universal service system works today, high cost carriers allocate an additional portion of their loop cost to the interstate jurisdiction for recovery from interstate access charges. When the Commission adopted this system, it acknowledged that its intent was to keep local rates lower, even though carriers actually received the payments from interstate access charges:

> At least one party has also questioned the efficacy of the Joint Board's proposal for assistance to high cost areas, noting that local companies are not required to use the additional interstate expense allocation to keep local rates lower...although the Joint Board has stated that this is the intended purpose of the additional interstate allocation. We believe that the interest of state regulatory officials in keeping local rates affordable as well as the watchfulness of individual consumers...will ensure that this assistance is used for its intended purpose.[16]

The Commission will help states ensure that USF money is allocated properly by clarifying that companies should use the funds to reduce local rates. The Commission did not include this directive in its USF Order. It appears implied, since the purpose of the new USF is the same as that of the current High Cost Fund.

Also, the Commission does not appear to repeal these separations regulations in the USF Order. It has suggested that it will convene a Joint Board to address separations issues related to the Order.[17] It appears to suggest in Footnote 775 that the separations regulation will continue in effect to provide high cost loop support for rural companies for the present

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[16] Decision and Order, 96 F.C.C.2d at para. 33.

[17] Under 47 U.S.C. § 410(c), the Commission must first refer separations issues to a Joint Board for analysis.

time.[18] The Commission does not provide any such clarification for non rural companies which are entitled to high cost support.

The Commission should confirm that its existing separations rules, which allow companies to allocate higher loop costs to the interstate jurisdiction, will remain in effect for all LECs until addressed by a Joint Board.

IV. The Commission Should Refer to the Joint Board the Issue of the Existing 200,000 Line Distinction for Support Payments So That it Can Be Eliminated During the Transition to the New System.

The existing federal support system provides less universal service support to high cost companies with over 200,000 lines. This distinction will remain in effect during the transition to the new universal service system. The Commission should refer elimination of this distinction to the Joint Board that reviews USF-related issues so that the distinction will not apply during the transition. The concept is inconsistent with ensuring that rates are reasonably comparable between rural and urban areas.

In comments filed in this record, Vermont argued against any perpetuation of a system where the size of a company determined the amount of its federal universal service support.[19] Just because a company serves over 200,000 lines, does not mean it is better able to support its own high cost loop needs through internal subsidization. Rural states like Vermont and Maine do not have significant urban areas. Their rural customers receive

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[18] The USF Order provides: "This allocation to the interstate jurisdiction would be in addition to any general allocation of loop costs to the interstate jurisdiction required by our rules. See 47 C.F.R. Section 36.601." USF Order para. 301, n. 775.

[19] See, e.g., Comments of the Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont and West Virginia Commissions, CC Docket No. 96-45 pp. 8-11 (filed May 1, 1996).

relatively little benefit from mandated statewide rate averaging. Companies such as NYNEX-Vermont which have few very low cost areas, have not been able to produce revenues sufficient to adequately subsidize high cost areas. This distinction in the separations rule should be referred to the Joint Board, and eliminated over the transition.

CONCLUSION

For these reasons, the Commission should take the following action:

* It should reconsider its decision to fund only 25% of the universal service need from the federal Fund, and reconsider not defining at what level rates will be considered reasonably comparable between rural and urban areas.

* It should clarify that states can present cost analyses to demonstrate that they need a higher federal USF payment, and that they need not take additional steps such as deaveraging rates and obtaining legislation for a "mega" state fund, to meet their burden.

* It should clarify that local companies should continue to use universal service support to reduce local rates; and that separations rules allocating additional loop expense to the interstate jurisdiction as a basis for this support continue until modified, if at all, by a Joint Board.

* It should clarify that if it convenes a Joint Board, it will refer the issue of eliminating the 200,000 line distinction for receiving support to that Board.

Respectfully submitted this 17th day of July, 1997.

VERMONT DEPARTMENT OF PUBLIC SERVICE
VERMONT PUBLIC SERVICE BOARD

Elisabeth H. Ross

Elisabeth H. Ross
BIRCH, HORTON, BITTNER AND CHEROT
1155 Connecticut Ave., NW, Suite 1200
Washington, DC 20036-4308
(202) 659-5800

Their Attorneys

High Cost Modeling Project
Standard FCC Model - BCPM
per May 8 Order

7/7/97 15:42

Applies revenue benchmark on CBG basis
Need Allocation: 25% to Inter; 75% to Intra
Federal levy on interstate revenues only
Applies federal revenues to interstate jurisdiction only

Summary of Federal Effort	Rates	Support (B)
for Interstate Juris. =	4.33%	$ 2.8
for Intrastate Juris. =	0.00%	$ -
Total =	4.33%	$ 2.8

	From BCPM Model: Need for Support		Effect on Interstate Jurisdiction: Federal Support (Federal Rate = 4.33%)		Effect on Intrastate Jurisdiction: Federal Support (Federal Charge Rate on Interstate Retail Revenue = 0.00%): Support		Net Gain or Loss				State Support			
	Total Need Amount (millions)	per Line per Month	Amount (millions)	per Line per Month	Amount (millions)	per Line per Month	Interstate Retail Revenues (millions)	Federal Pgm Surcharge Paid (millions)	Net Gain (millions)	per Line per Month	Support Amount (millions)	per Line per Month	Intrastate Retail Revenue (millions)	State Program Rate (percent)
Alabama	345.7	$ 12.37	86.4	$ 3.09	0.0	$ -	868	0.0	0.0	$ -	259.2	$ 9.28	1,500	17.3%
Arizona	181.7	$ 6.15	45.4	$ 1.54	0.0	$ -	1,232	0.0	0.0	$ -	136.3	$ 4.61	1,225	11.1%
Arkansas	295.9	$ 19.13	74.0	$ 4.78	0.0	$ -	526	0.0	0.0	$ -	221.9	$ 14.34	803	27.6%
California	500.1	$ 2.02	125.0	$ 0.51	0.0	$ -	6,322	0.0	0.0	$ -	375.1	$ 1.52	13,488	2.8%
Colorado	170.6	$ 5.83	42.6	$ 1.46	0.0	$ -	1,236	0.0	0.0	$ -	127.9	$ 4.37	1,465	8.7%
Connecticut	64.6	$ 2.65	16.2	$ 0.66	0.0	$ -	1,082	0.0	0.0	$ -	48.5	$ 1.99	1,406	3.4%
Delaware	16.7	$ 2.71	4.2	$ 0.68	0.0	$ -	237	0.0	0.0	$ -	12.5	$ 2.03	198	6.3%
District of Columbia	0.1	$ 0.01	0.0	$ 0.00	0.0	$ -	372	0.0	0.0	$ -	0.1	$ 0.01	409	0.0%
Florida	279.4	$ 2.41	69.8	$ 0.60	0.0	$ -	4,099	0.0	0.0	$ -	209.5	$ 1.80	5,860	3.6%
Georgia	356.4	$ 6.81	89.1	$ 1.70	0.0	$ -	2,085	0.0	0.0	$ -	267.3	$ 5.11	2,884	9.3%
Hawaii	25.9	$ 3.03	6.5	$ 0.76	0.0	$ -	269	0.0	0.0	$ -	19.4	$ 2.27	424	4.6%
Idaho	135.9	$ 18.08	34.0	$ 4.52	0.0	$ -	321	0.0	0.0	$ -	101.9	$ 13.56	329	30.9%
Illinois	298.0	$ 3.19	74.5	$ 0.80	0.0	$ -	2,701	0.0	0.0	$ -	223.5	$ 2.39	4,408	5.1%
Indiana	292.7	$ 7.34	73.2	$ 1.84	0.0	$ -	1,177	0.0	0.0	$ -	219.5	$ 5.51	2,070	10.6%
Iowa	264.8	$ 14.10	66.2	$ 3.52	0.0	$ -	629	0.0	0.0	$ -	198.6	$ 10.57	908	21.9%
Kansas	232.5	$ 12.92	58.1	$ 3.23	0.0	$ -	629	0.0	0.0	$ -	174.4	$ 9.69	904	19.3%
Kentucky	367.5	$ 15.36	91.9	$ 3.84	0.0	$ -	892	0.0	0.0	$ -	275.6	$ 11.52	1,381	20.0%
Louisiana	222.1	$ 7.85	55.5	$ 1.96	0.0	$ -	871	0.0	0.0	$ -	166.5	$ 5.88	1,552	10.7%
Maine	118.2	$ 12.77	29.5	$ 3.19	0.0	$ -	302	0.0	0.0	$ -	88.6	$ 9.58	439	20.2%
Maryland	84.9	$ 2.10	21.2	$ 0.53	0.0	$ -	1,414	0.0	0.0	$ -	63.6	$ 1.58	1,942	3.3%
Massachusetts	84.8	$ 1.66	21.2	$ 0.42	0.0	$ -	1,804	0.0	0.0	$ -	63.6	$ 1.25	2,594	2.5%
Michigan	341.4	$ 4.74	85.4	$ 1.19	0.0	$ -	1,776	0.0	0.0	$ -	256.1	$ 3.56	3,949	6.5%
Minnesota	288.4	$ 8.68	72.1	$ 2.17	0.0	$ -	1,075	0.0	0.0	$ -	216.3	$ 6.51	1,557	13.9%
Mississippi	272.5	$ 17.65	68.1	$ 4.41	0.0	$ -	529	0.0	0.0	$ -	204.4	$ 13.24	872	23.4%
Missouri	350.3	$ 9.48	87.6	$ 2.37	0.0	$ -	1,207	0.0	0.0	$ -	262.8	$ 7.11	1,869	14.1%
Montana	159.7	$ 27.13	39.9	$ 6.78	0.0	$ -	239	0.0	0.0	$ -	119.8	$ 20.35	304	39.5%
Nebraska	170.9	$ 14.52	42.7	$ 3.63	0.0	$ -	400	0.0	0.0	$ -	128.2	$ 10.89	688	18.6%
Nevada	77.0	$ 6.12	19.3	$ 1.53	0.0	$ -	1,710	0.0	0.0	$ -	57.8	$ 4.59	1,113	5.2%
New Hampshire	63.6	$ 7.00	15.9	$ 1.75	0.0	$ -	421	0.0	0.0	$ -	47.7	$ 5.25	419	11.4%
New Jersey	54.4	$ 0.76	13.6	$ 0.19	0.0	$ -	2,844	0.0	0.0	$ -	40.8	$ 0.57	3,345	1.2%
New Mexico	177.2	$ 17.29	44.3	$ 4.32	0.0	$ -	448	0.0	0.0	$ -	132.9	$ 12.96	513	25.9%
New York	376.9	$ 2.57	94.2	$ 0.64	0.0	$ -	4,964	0.0	0.0	$ -	282.7	$ 1.93	8,298	3.4%
North Carolina	442.2	$ 8.57	110.6	$ 2.14	0.0	$ -	1,781	0.0	0.0	$ -	331.7	$ 6.43	2,932	11.3%
North Dakota	116.6	$ 24.06	29.1	$ 6.02	0.0	$ -	177	0.0	0.0	$ -	87.4	$ 18.05	233	37.5%
Ohio	399.8	$ 5.15	99.9	$ 1.29	0.0	$ -	2,391	0.0	0.0	$ -	299.8	$ 3.86	4,791	6.3%
Oklahoma	283.5	$ 12.90	70.9	$ 3.23	0.0	$ -	725	0.0	0.0	$ -	212.6	$ 9.68	1,033	20.6%
Oregon	234.8	$ 10.44	58.7	$ 2.61	0.0	$ -	820	0.0	0.0	$ -	176.1	$ 7.83	1,051	16.7%
Pennsylvania	385.3	$ 4.12	96.3	$ 1.03	0.0	$ -	2,831	0.0	0.0	$ -	289.0	$ 3.09	4,171	6.9%
Rhode Island	15.0	$ 2.00	3.8	$ 0.50	0.0	$ -	289	0.0	0.0	$ -	11.3	$ 1.50	311	3.6%
South Carolina	241.0	$ 10.02	60.2	$ 2.51	0.0	$ -	893	0.0	0.0	$ -	180.7	$ 7.52	1,429	12.7%
South Dakota	133.1	$ 27.43	33.3	$ 6.86	0.0	$ -	192	0.0	0.0	$ -	99.8	$ 20.57	221	45.1%
Tennessee	323.3	$ 8.55	80.8	$ 2.14	0.0	$ -	1,257	0.0	0.0	$ -	242.5	$ 6.42	1,817	13.3%
Texas	811.6	$ 6.29	202.9	$ 1.57	0.0	$ -	3,743	0.0	0.0	$ -	608.7	$ 4.71	6,873	8.9%
Utah	78.8	$ 6.57	19.7	$ 1.64	0.0	$ -	457	0.0	0.0	$ -	59.1	$ 4.93	505	11.7%
Vermont	56.7	$ 12.49	14.2	$ 3.12	0.0	$ -	199	0.0	0.0	$ -	42.5	$ 9.37	193	22.1%
Virginia	296.7	$ 5.86	74.2	$ 1.47	0.0	$ -	1,871	0.0	0.0	$ -	222.5	$ 4.40	2,473	9.0%
Washington	232.7	$ 5.84	58.2	$ 1.46	0.0	$ -	1,416	0.0	0.0	$ -	174.5	$ 4.38	2,004	8.7%
West Virginia	237.2	$ 21.00	59.3	$ 5.25	0.0	$ -	384	0.0	0.0	$ -	177.9	$ 15.75	606	29.3%
Wisconsin	274.8	$ 7.30	68.7	$ 1.83	0.0	$ -	1,041	0.0	0.0	$ -	206.1	$ 5.48	1,856	11.1%
Wyoming	86.4	$ 25.61	21.6	$ 6.40	0.0	$ -	159	0.0	0.0	$ -	64.8	$ 19.21	152	42.6%
Total	11,320		2,830		-		65,305	-	-		8,490		101,770	
Maximum Value		$ 27.43		$ 6.86		$ -				$ -		$ 20.57		45.1%
Minimum Value		$ 0.01		$ 0.00		$ -				$ -		$ 0.01		0.0%
Weighted Average		$ 5.78		$ 1.44		$ -				$ -		$ 4.33		8.3%

Attachment A